

**Letter of Findings: 04-20221061
for the Years 2018 and 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Business provided sufficient information to support its abatement request.

ISSUE**I. Tax Administration - Negligence Penalty.**

Authority: IC § 6-2.5-4-2; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 2.2-5-10](#); [45 IAC 15-11-2](#).

Taxpayer requests the Department abate the negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana-based company that provides solutions for company processes involving particle separation, dust collection, ventilation, pollution control, and the like. A portion of Taxpayer's business consists of manufacturing equipment which is then resold to various pharmaceutical companies.

In 2018 and 2019, Taxpayer was subject to a sales tax audit by the Indiana Department of Revenue ("Department"). The Department found that Taxpayer owed additional sales tax for both periods. The Department also assessed interest and penalties. Taxpayer paid the underlying base sales tax liability for each period as well as the assessed interest but protested the imposition of the two negligence penalties.

Taxpayer requested the Department abate the penalties for 2018 and 2019 and submitted a protest to that effect. An administrative hearing was held in which Taxpayer's representative explained the events surrounding the audit. This Memorandum of Decision results. Additional facts will be provided as necessary.

I. Tax Administration - Negligence Penalty.**DISCUSSION**

The Department imposed a ten percent negligence penalty because Taxpayer failed to timely remit the amount of sales tax owed on certain items. Taxpayer requested the Department abate the negligence penalty.

Under IC § 6-8.1-5-1(c), "the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment, including the negligence penalty, is presumptively valid.

Pursuant to IC § 6-8.1-10-2.1(a) (2018 and 2019), the Department may assess a penalty if a person:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, personal delivery and the payment is not received by the department by the due date in funds acceptable to the department. . .

Under IC § 6-8.1-10-2.1(b) (2018 and 2019), the penalty is ten percent of:

- (1) the full amount of the tax due if the person failed to file the return;
- (2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;
- (3) the amount of the tax held in trust that is not timely remitted;
- (4) the amount of deficiency as finally determined by the department; or
- (5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

Negligence is defined under [45 IAC 15-11-2](#)(b) as follows:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed taxes laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Following [45 IAC 15-11-2](#)(c), the Department may waive a negligence penalty if:

[T]he Taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry to a duty giving rise to the penalty imposed under this section.

Factors that may be considered include:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment. Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Id.

In this instance, Taxpayer explained that the company expanded quickly, and there was general confusion regarding the resale of certain items. Taxpayer believed, albeit incorrectly, that certain items qualified as exempt under the manufacturing exemption. See generally [45 IAC 2.2-5-10](#); IC § 6-2.5-4-2. More specifically, Taxpayer thought that if an item was produced by a manufacturer (i.e. itself) and later sold to another manufacturer, then the item was exempt. While participating in the audit process, Taxpayer realized it had a fundamental lack of understanding as to how sales tax worked in Indiana. As a result, Taxpayer immediately hired a full time Controller who now focuses her attention on compliance with sales tax laws and resale certificates.

Taxpayer has a history of timely filing and paying Indiana taxes. Considering the circumstances, the Department finds no "willful neglect" on Taxpayer's part and agrees that, despite its clear misunderstanding of sales tax law, Taxpayer consistently "exercised ordinary business care and prudence." Based on a "case by case" analysis and after reviewing "the facts and circumstances of [this] taxpayer," the Department agrees that the penalties should be abated.

FINDING

Taxpayer's protest is sustained.

July 5, 2022

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